

### REMARKS

Claims 1-4, 6, and 8-26 are pending in the application. Claim 25 has been amended. No new matter is being introduced by way of the amendments. Reconsideration of the present application is respectfully requested.

#### **Rejections under 35 U.S.C. § 112.**

Claims 25 and 26 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite. In particular, the Office Action indicates that “Applicant claims a second server in communication with the first server” and that is “unclear if this is the same server that is referred to in step 3 or a different server.” Applicants have amended Claim 25 to change the phrase “a second server” to “the second server.” Accordingly, Applicants respectfully request that the 35 U.S.C. 112, second paragraph rejections of Claims 25-26 be withdrawn.

#### **Rejections under 35 U.S.C. § 103**

Claims 1-4 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,944,824 to He (hereinafter “He”) in view of U.S. Patent No. 5,916,302 to Dunn et al. (hereinafter “Dunn”) and U.S. Patent Publication No. 2003/0219008 A1 to Hrastar (hereinafter “Hrastar”), and further in view of U.S. Patent No. 6,678,826 to Kelly et al. (hereinafter “Kelly”). Independent Claim 1 includes the features of “an out-of-band access path defined by a communication path between the user computing device and the remote network element via said first network, firewall, first server, modem bank, and PSTN.” The Office Action acknowledges that He fails to disclose the claimed configuration for an in-band and out-of-band access path. The Office Action asserts that Figure 11 of Dunn discloses an “out-of-band access path being defined by communication path between the user (88), and the remote network element (80) via said first network (114), firewall (115), server (93), modem bank (109) and PSTN (108).” Applicants respectfully disagree. As described in column 12, lines 45-56 of Dunn, Station B is formed of two separate devices including digital computer 88, which the Office Action asserts is a “user”, and analog telephone 85. The cited portion of Dunn further describes that Station B contains a computer 80, which the Office Action asserts is a “remote network element.” Applicant respectfully submits that Dunn contains no

teaching or suggestion of an out-of-band access path between the digital computer 88 and the computer 80. As described by Dunn, the digital computer 88 connects to the computer 80 through a single data path. There is no other access path between the digital computer 88 and the computer 80 disclosed in Dunn, much less an access path that can be characterized as out-of-band. Applicant respectfully submits that Hrastar and Kelly also fail to teach or suggest the aforementioned features of Independent Claim 1. For at least the foregoing reasons, Applicants respectfully submit that Independent Claim 1 is allowable over the cited references and request that the 35 U.S.C. 103(a) rejection of Independent Claim 1 be withdrawn.

Claims 2-4 are dependent upon and include the features of Independent Claim 1. For at least the reasons discussed with respect to Independent Claim 1, Applicants respectfully submit that Claims 2-4 are allowable over the cited references and request that the 35 U.S.C. 103(a) rejections of Claims 2-4 be withdrawn.

Claims 6 and 10 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly, and further in view of Dunn and Hrastar. Regarding Independent Claim 6, Independent Claim 6 includes the features of “communicating between the user computing device and the network element via an out-of-band access path, the out-of-band access path including the firewall, a first server, a modem bank, and a public switched telephone network.” The Office Action acknowledges that Kelly does not disclose the claimed configuration of an in-band and out-of-band access path. The Office Action asserts that Dunn teaches the aforescribed features of Independent Claim 6. For similar reasons as those discussed with respect to Independent Claim 1, Applicant respectfully submits that Dunn fails to teach or suggest the these features of Independent Claim 6. Hrastar also fails to teach or suggest these features. For at least the foregoing reasons, Applicants respectfully submit that Independent Claim 6 is allowable over the cited references and request that the 35 U.S.C. 103(a) rejection of Independent Claim 6 be withdrawn.

Claims 10 is dependent upon and includes the features of Independent Claim 6. For at least the reasons discussed with respect to Independent Claim 6, Applicants respectfully submit that Claim 10 is allowable over the cited references and request that the 35 U.S.C. 103(a) rejection of Claim 10 be withdrawn.

Claims 8 and 9 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly in view of Dunn and Hrastar as applied to Claim 6 and 10, and further in view of He. Claims 8 and 9 are dependent upon and include the features of Independent Claim 6. As discussed with respect to

Independent Claim 6, Kelly in view of Dunn and Hrastar fail to teach or suggest the features of Independent Claim 6. For similar reasons as discussed with respect to Independent Claim 1, He also fails to teach or suggest these features. Applicants respectfully submit that Claims 8 and 9 are allowable over the cited references and request that the 35 U.S.C. 103(a) rejections of Claims 8 and 9 be withdrawn.

Claims 11-22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over He, and further in view of Dunn. Independent Claim 11 includes the feature of computer-useable instructions, that when executed on a computing device, cause the computing device to “receive a first request via an out-of-band process to establish a communications pathway with a network device.” For similar reasons as those discussed with respect to Independent Claim 1, Applicants respectfully submit that He in view of Dunn fail to teach or suggest establishing a communication pathway between a computing device and a network device via an out-of-band process. For at least this reason, Applicants respectfully submit that Independent Claim 11 is allowable over the cited references and request that the 35 U.S.C. 103(a) rejection of Independent Claim 11 be withdrawn.

Claims 12-22 are dependent upon and include the features of Independent Claim 11. For at least the reasons discussed with respect to Independent Claim 11, Applicants respectfully submit that Claims 12-22 are allowable over the cited references and request that the 35 U.S.C. 103(a) rejections of Claims 12-22 be withdrawn.

Claims 23 and 24 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly, and further in view of Dunn. Independent Claim 23 includes the feature of “wherein said remote modem is configured to accept communications only from a predetermined set of addresses or phone numbers.” The Office Action acknowledges that Kelly fails to disclose this feature. However, the Office Action asserts that Column 12, lines 49-50 of Dunn discloses this feature. In particular, the Office Action asserts that the cited portion of Dunn teaches that “there is only one connection line so it is a predetermined.” Applicant respectfully disagrees. The fact that Dunn illustrates a single connection line to and from a particular “remote modem” in Figure 11 does not teach that the “remote modem” is configured to accept communications only from a predetermined set of addresses or phone numbers. For example, the modem 81 coupled to the computer 80 of Station D in Figure 11 of Dunn is capable of accepting communication from at least digital computer 76 of Station A and digital computer 88 of Station B. Dunn contains no teaching or suggestion that the modem 81 is configured to only accept communications from a predetermined

set of addresses or phone numbers. For at least this reason, Applicants respectfully submit that Independent Claim 23 is allowable over the cited references and request that the 35 U.S.C. 103(a) rejection of Independent Claim 23 be withdrawn.

Claims 24 is dependent upon and includes the features of Independent Claim 23. For at least the reason discussed with respect to Independent Claim 23, Applicants respectfully submit that Claim 24 is allowable over the cited references and request that the 35 U.S.C. 103(a) rejection of Claim 24 be withdrawn.

Claims 25 and 26 stand rejected under 35 U.S.C. 103(a) as being unpatentable over He in view of Dunn and Hrastar as applied to Claim 1, and further in view of U.S. Patent Application Publication No. 2001/0024446 A1 to Craig et al. (hereinafter "Craig"). Claims 25-26 are dependent upon and include the features of Independent Claim 1. As discussed with respect to Independent Claim 1, He in view of Dunn and Hrastar fail to teach or suggest the features of Independent Claim 1. Applicants respectfully submit that Craig also fails to teach or suggest these features. Applicants respectfully submit that Claims 25 and 26 are allowable over the cited references and request that the 35 U.S.C. 103(a) rejections of Claim 25 and 26 be withdrawn.

## CONCLUSION

For the foregoing reasons, and for other apparent reasons, Applicants respectfully request reconsideration and favorable action. If the Examiner feels a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stand ready to conduct such a conference at the convenience of the Examiner.

Applicants believe no fee is due. However, if a fee is due, please charge our Deposit Account No. 19-3140, under Order No. 11000060-0039 from which the undersigned is authorized to draw.

Dated: April 8, 2008

Respectfully submitted,

By Michael W. Maddox

Michael W. Maddox

Registration No.: 47,764

Sonnenschein, Nath & Rosenthal

1717 Main, Suite 3400

Dallas, Texas 75201

(214) 259-0900

(214) 259-0910 (Fax)

Attorney for Applicants